

## **STATE EMPLOYEES' PARTICIPATION IN POLITICAL ACTIVITIES**

Summarized below are Commission cases addressing State employees' participation in partisan political activities. The Commission permits involvement in partisan political activities provided that there is no provision in the Departmental code of ethics prohibiting such activities. (Election Law Enforcement Commission, Executive Commission on Ethical Standards and several other agency codes have specific provisions prohibiting such activities.) State employees, however, may not use State time or State resources in pursuit of such activities. As with other outside activities, the State employee must obtain the prior approval of the Departmental Ethics Liaison Officer.

Two sections of the Conflicts Law, *N.J.S.A. 52:13D-14* and *24*, address the acceptance and/or solicitation of campaign contributions.

Section 14 provides:

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

Section 24 provides:

No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance or other matter related to his official duties, except reasonable fees for speeches or published works on matters within his official duties and except, in connection therewith, reimbursement of actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the

State of New Jersey. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office.

In Commission Case No. 45-73, a member of the Commission on Legalized Games of Chance requested an opinion from the Commission as to whether the provisions of the Conflicts of Interest Law would restrict his involvement in political activities in the county where he resided. The Attorney General's Office was asked to review the request and issued an opinion which advised that the State official was permitted to engage in political activities, barring a prohibition against such activities in the Department's Code of Ethics.

In Commission Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.

In Commission Case No. 756-79, the Commission determined that it would not be a conflict of interest for a member of a County Board of Taxation to simultaneously serve as a Commissioner on the County Tax Board and hold the position of County Chairman of a political party in the same county.

In Commission Case No. 972-81, the Commission determined that a Housing Finance Agency ("HFA") employee was permitted to run for municipal office in a municipality where housing projects sponsored by the HFA were located. The employee was cautioned that, if elected, she should not have any dealings with any project located in East Orange as long as she was a member of the Council.

In Commission Case No. 987-81, the Commission affirmed the Department of Labor Ethics Committee determination that the employee's position as a Democratic State Committeeman and Member of the Warren County Democratic Committee as well as his candidacy for the Lopatcong Township Council did not constitute a violation of the Conflicts of Interest Law. The Commission also concurred with the caveats imposed by the Department prohibiting the use of State time, stationery and telephones by the employee for his political activities and further extended this prohibition to include any other State resources.

In Commission Case No. 34-85, two members of the Board of Dentistry were advised that *N.J.S.A. 52:13D-24* expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

In May 1990, the Casino Control Commission ("CCC") requested an Advisory Opinion from the Commission as to whether certain political activities, if engaged in by members of the CCC, would violate ethical restrictions contained in the Casino Control Act or the CCC's Code of Ethics. Because this request involved a statutory interpretation, the Attorney General's Office was asked to review it. An Opinion was received which stated that, given the directive in the Casino Control Act that the CCC promulgate a code of ethics modeled upon the Code of Judicial Conduct, it appeared that without a legislative change to the Casino Control Act, members of the CCC were prohibited from those political and partisan activities that are prohibited by the Code of Judicial Conduct.

In Commission Case No. 17-95, a County Superintendent of Elections employee was advised that she was permitted to run for a council seat in a partisan political election because her responsibilities as Program Coordinator involved only student voter registration, the planning of educational programs and the handling of press releases and correspondence. The employee had no responsibilities in connection with the election process. She was advised, however, that she should have no involvement with student voter registration activities in the municipality in which she was a council candidate.

In 1997 (Commission Case No. 29-97), the Commission considered the effect of section 16(b) of the Conflicts Law on State officers and employees who serve as campaign treasurers. Section 16(b) prohibits State officers and employees from representing, appearing for or negotiating on behalf of, or agreeing to perform any of those activities for, a party other than the State in connection with any matter pending before any State agency. The Commission's precedent has established that signing reports, making telephone calls, attending meetings and/or responding to inquiries by a State agency on behalf of a third party are acts of representation. Campaign reports must be signed by the campaign treasurer and submitted to the Election Law Enforcement Commission ("ELEC"), a State agency, and in the event of a complaint to ELEC, the treasurer would be required to appear in person or respond in writing to ELEC's inquiry. Thus, a State officer or employee is prohibited from serving as a campaign treasurer because the treasurer's duties include representing the campaign organization and/or the candidate before ELEC.

The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission and are printed here for the reader's information and convenience.

***N.J.A.C. 4A:10-1.2 Political activity***

- a. No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See *N.J.S.A. 11A:2-23*.
- b. No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 et seq.):
  - 1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;
  - 2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or
  - 3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.
- c. The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

***N.J.A.C. 4A:2-5.1 General provisions***

- b. An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

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